IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO. 2 OF 1990
IN
WRIT PETITION NO. 3149 OF 1983

P.B.K. Menon ..... Appellant.

V/s

State Bank of Bikaner & Jaipur
Officers Matruchhaya Cooperative
Housing Society Limited & Ors. ..... Respondents.

Mr. Y.R. Naik for the appellant.

Ms. Pushpa Tiwari i/b SRS Legal for respondent Nos. 2A to 2C.

CORAM : D.K. DESHMUKH &
V.M. KANADE, JJ.
DATE : 27th November, 2007.

P.C.:

1. The appellant is challenging the judgment and order passed by the learned Single Judge in Writ Petition No.3149 of 1990 dated 23rd October, 1989 whereby the learned Single Judge was pleased to dismiss the Writ Petition filed by the appellant who is the Petitioner in the said Writ Petition, confirming the order passed by the Co-operative Appellate Court in Appeal No.71 of 1980 which, in turn, confirmed the decision of the Co-operative Court No.II dated 16th November, 1979 in Case No.ABN/II/248/1184 of 1978.

2. Brief facts which are relevant of the purpose of deciding this Letters Patent Appeal are that the Disputant - Society was formed

some time in 1969 which constructed a building in which there were 12 flats. Flat No.6 was alloted to Shri D.N. Aneja of State Bank of Bikaner & Jaipur. The Society permitted Respondent No.2 and two others to let out their flats and pursuant to the said permission which was granted, the said Shri Aneja gave the flat to the Petitioner on monthly rent of Rs 300/-. The Society then asked Shri Aneja to occupy the flat personally, failing which the tenancy in respect of the flat would stand terminated. Since the flat was not occupied by Shri Aneja, the Society filed a dispute under section 91 of the Maharasthra Co-operative Societies Act against Respondent No.2 and the Petitioner for recovery of possession of the suit flat. Petitioner filed his Written Statement to the dispute and claimed tenancy in respect of the suit flat and alternatively claimed that he was a protected licensee under section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and that the Co-operative Court would not have jurisdiction to decide the said issue. The Co-operative Court, however, decreed the suit against Shri Aneja - Respondent No.2 and the Petitioner - P.B.K. Menon. Appeal was filed against the said order. That appeal was also dismissed and the findings of the Trial Court were confirmed. Against this order, a Writ Petition filed by the Petitioner was also dismissed. The learned Single Judge relied on the judgments of various learned Single Judges of this Court including the judgment in Writ Petition No.2513 of 1989 in Sanwarmal Kejriwal v. Vishwa Co-operative Housing Society Ltd and Ors decided on 16th June, 1989 and also on the decision in H.P. Corporation Ltd. v. Shyam Co-op. Housing Society, reported in **AIR 1989 SC 295.**

3. When the matter was called out Ms. Pushpa Tiwari, learned Counsel, submitted that the papers had been taken away by the respondent Nos. 2A to 2C. The learned Counsel for the appellants also filed an affidavit of service, stating therein that all the respondents had been served. The affidavit has been taken on record.

4. The learned Counsel appearing on behalf of the appellant firstly submitted that, during the pendency of the Petition, he had filed a suit in the Small Causes Court, claiming a declaration that he is a tenant of the suit premises. He submitted that the said suit had been decreed. He has invited our attention to the judgment of the Small Causes Court in the said suit. He submits that this order has become final. He further submitted that the judgment in the case of Sanwarmal Kejriwal Vs. Vishwa Co-operative Housing Society Ltd and Ors which was delivered by the learned Single Judge of this Court in Writ Petition No.2513 of 1989 was set aside by the Apex Court and the Apex court had held in the judgment in the case of Sanwarmal Kejriwal Vs. Vishwa Cooperative Housing Society Ltd and Others reported in **(1990) 2 SCC 288** that the Co-operative Court would not have jurisdiction to pass an order of eviction against the member and a licensee who is deemed to be the statutory tenant under section 15A of the Bombay Rent Act. The Apex Court referred to the judgment in the case of Hindustan Petroleum Corporation Ltd Vs. Shyam Co-operative Housing Society, reported in **(1988) 4 SCC 747** as also other judgments on this aspect. The learned Counsel appearing on behalf of the appellant submits that the ratio of these judgments still holds the field.

5. In view of the ratio of the judgment of the Supreme Court in Sanwarmal Kejriwal (supra), this Letters Patent Appeal will have to be allowed.

6. In the result, the judgment and order passed by the Co-operative Court No.II dated 16th November, 1979 in Case No.ABN/II/248/1184 of 1978 is quashed and set aside as also the Judgment and Order of the Co-operative Appellate Court in Appeal No.71 of 1980. The judgment and order passed by the learned Single Judge in Writ Petition No.3149 of 1983 is set aside. Letters Patent Appeal is accordingly allowed. Under the circumstances, there shall be no order as to costs.

(D.K. DESHMUKH, J.)

(V.M. KANADE, J.)